

## Brigham Young University Law School BYU Law Digital Commons

---

### Utah Supreme Court Briefs

---

2001

# Jan H. Peterson v. Judith Ann Peterson : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_sc2](https://digitalcommons.law.byu.edu/byu_sc2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Craig S. Cook; Jay E. Meservy; Attorneys for Plaintiff-Appellant.

Raymond A. Hintze; Attorney for Defendant-Respondent.

---

### Recommended Citation

Brief of Respondent, *Peterson v. Peterson*, No. 17289.00 (Utah Supreme Court, 2001).

[https://digitalcommons.law.byu.edu/byu\\_sc2/1616](https://digitalcommons.law.byu.edu/byu_sc2/1616)

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

[http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

KFU  
45.9  
.S9

DOCKET NO.

17281B

IN THE SUPREME COURT OF THE STATE OF UTAH

\*\*\*\*\*

JAN H. PETERSON,

Plaintiff-Appellant,

vs.

JUDITH ANN PETERSON,

Defendant-Respondent.

)  
)  
)  
) No. 17289  
)  
)  
)

\*\*\*\*\*

RESPONDENT'S BRIEF

Appeal from the Judgment of the  
THIRD JUDICIAL DISTRICT COURT  
in and for Salt Lake County  
The Honorable G. Hal Taylor, Presiding

RAYMOND A. HINTZE  
4685 Highland Drive, Suite 202  
Salt Lake City, Utah 84117

ATTORNEY FOR DEFENDANT-  
RESPONDENT

CRAIG S. COOK  
3645 East 3100 South  
Salt Lake City, Utah 84109

JAY E. MESERVY  
820 Newhouse Building  
Salt Lake City, Utah 84111

ATTORNEYS FOR PLAINTIFF-  
APPELLANT

FILED

MAR 17 1981

IN THE SUPREME COURT OF THE STATE OF UTAH

\*\*\*\*\*

JAN H. PETERSON,	)	
	)	
Plaintiff-Appellant,	)	
	)	
vs.	)	No. 17289
	)	
JUDITH ANN PETERSON,	)	
	)	
Defendant-Respondent.	)	

\*\*\*\*\*

RESPONDENT'S BRIEF

Appeal from the Judgment of the  
THIRD JUDICIAL DISTRICT COURT  
in and for Salt Lake County  
The Honorable G. Hal Taylor, Presiding

RAYMOND A. HINTZE  
4685 Highland Drive, Suite 202  
Salt Lake City, Utah 84117

ATTORNEY FOR DEFENDANT-  
RESPONDENT

CRAIG S. COOK  
3645 East 3100 South  
Salt Lake City, Utah 84109

JAY E. MESERVY  
820 Newhouse Building  
Salt Lake City, Utah 84111

ATTORNEYS FOR PLAINTIFF-  
APPELLANT

## TABLE OF CONTENTS

	PAGE
NATURE OF THE CASE . . . . .	1
DISPOSITION IN THE LOWER COURT . . . . .	1
RELIEF SOUGHT ON APPEAL. . . . .	1
STATEMENT OF FACTS . . . . .	2
ARGUMENT:	
<u>POINT I:</u>	
THE TRIAL COURT IS GIVEN CONSIDERABLE DISCRETION IN DECIDING FAMILY MATTERS, AND NO ABUSE OF DIS- CRETION IS SHOWN BY APPELLANT. . . . .	3
<u>POINT II:</u>	
THE DEFENDANT-RESPONDENT WAS NOT ENTITLED TO ALI- MONY IN THE ANNULMENT PROCEEDING AND THE REIN- STATEMENT OF ALIMONY WAS CLEARLY EQUITABLE . . . .	5
CONCLUSION. . . . .	10

### CASES CITED

<u>Cecil v. Cecil</u> , 11 Utah 2d 155, 356 P.2D 279 (1960) . . . .	6
<u>Ferguson vs. Ferguson</u> , 564 P.2d 1380 (1977) . . . . .	3,5,6,7,9
<u>Kent v. Kent</u> , 28 Utah 2d 34, 497 P.2d 652 (1972). . . . .	6
<u>Maple v. Maple</u> , 556 P.2d 1229 (1977). . . . .	4

### STATUTES CITED

Utah Code Annotated (1953 as amended), Section 30-1-17.2 . . . . .	4,5,9
---	-------

IN THE SUPREME COURT OF THE STATE OF UTAH

\*\*\*\*\*

JAN H. PETERSON,	)	
	)	
Plaintiff-Appellant,	)	
	)	
vs.	)	No. 17289
	)	
JUDITH ANN PETERSON,	)	
	)	
Defendant-Respondent.	)	

\*\*\*\*\*

RESPONDENT'S BRIEF

NATURE OF THE CASE

This is an action commenced by the Defendant-Respondent against the Plaintiff-Appellant in a proceeding to reinstate alimony in the divorce decree following an annulment. Both the original divorce decree and the annulment involved the same parties.

DISPOSITION IN LOWER COURT

The District Court Judge, G. HAL TAYLOR, after hearing the evidence concluded that the alimony under the divorce decree should be reinstated and that the life insurance policy should be maintained naming the Defendant-Respondent as beneficiary.

RELIEF SOUGHT ON APPEAL

Defendant-Respondent seeks an Order from this Court upholding the trial court's Order reinstating alimony under her prior divorce decree.

### STATEMENT OF THE FACTS

The parties to this action originally married in 1967 and remained married for eleven years. In June, 1978, the Plaintiff-Appellant, JAN H. PETERSON, filed an action for divorce against the Defendant-Respondent, JUDITH ANN PETERSON, (R 2-4). The case was finally settled by Stipulation between the parties and the Plaintiff-Appellant agreed to pay to the Defendant-Respondent the sum of \$250 per month as alimony (R 5-16). At the time of the divorce, the Plaintiff-Appellant's income was \$1,000 per month net (R 77) and at the time of the reinstatement hearing his net earnings were \$1,024.94 (R 88). The Plaintiff-Appellant's expenses had decreased as a result of his payoff of numerous of the financial obligations which existed at the time of the divorce (R 128). The Defendant-Respondent had no income at the time of the divorce. At the time of the hearing for reinstatement of alimony she was on public assistance, receiving \$253 per month (R 95, 105). Defendant-Respondent further indicated that her expenses had substantially increased between the time of the divorce and the time of the reinstatement hearing (R 93).

On May 20, 1979, the parties remarried and lived together as husband and wife for two weeks (R 85). On July 16, 1979, the Defendant-Respondent herein filed a complaint for annulment in Third Judicial District Court, Civil No. D79-2818. The annulment proceeding went forward on a Stipulation, Waiver,

and Consent signed by Plaintiff-Appellant and was entered on August 21, 1979. No appeal was ever filed from said decree. The trial court took judicial notice of and was familiar with the annulment action (R 75-76).

Subsequently, the Defendant-Respondent herein filed a motion in the Third Judicial District Court for reinstatement of the alimony under the divorce decree. The matter was heard before the Honorable Judge, G. HAL TAYLOR, of the Third Judicial District Court who after hearing the evidence ruled in favor of Defendant-Respondent and reinstated the alimony. From this decision, the Plaintiff-Appellant has filed this appeal.

### ARGUMENT

#### POINT I.

THE TRIAL COURT IS GIVEN CONSIDERABLE DISCRETION IN DECIDING FAMILY MATTERS, AND NO ABUSE OF DISCRETION IS SHOWN BY APPELLANT.

This case comes to the Supreme Court on review of a discretionary ruling. In accordance with the holding of the Ferguson v. Ferguson, 546 P.2d 1380 (1977), this Court has granted the trial court responsibility to exercise its sound discretion in ordering reinstatement of alimony upon consideration of all of the circumstances presented at the trial. In

conformance with that decision, the Defendant-Respondent herein filed a Motion for Reinstatement of Alimony under the prior decree and the Court having heard all of the evidence presented by the parties, concluded that reinstatement of alimony under the circumstances was equitable.

This Court in Maple v. Maple, 566 P.2d 1229 (1977), in reviewing an appeal from an annulment stated its general rule of review:

"In reviewing the findings and order made pursuant to an annulment under the authorization of statute quoted above (UCA, Section 30-1-17.2), the rule of review by this Court is the same as in other family problems. Due to the trial court's advantaged position and responsibilities, we indulge him considerable latitude of discretion and do not disagree therewith and upset his judgment unless it appears that there has been a plain abuse thereof." (Id. at p. 1230)

The sole issue raised by Plaintiff-Appellant's relies on an assumption that the trial court misinterrupted the Findings and Conclusions of Judge Winder in the annulment proceedings between the parties. This assumption is not supported by the record. The trial judge stated he had read the annulment file and he was familiar with it (R 75-76). Defendant-Respondent asserts that the Findings and Conclusions of the annulment so far as the grounds were concerned were immaterial to the issues presented by this appeal and the Court's Findings of Fact issued in support of its decision herein were clearly supported by the evidence presented by the parties at the hearing herein. The Plaintiff-Appellant has clearly failed in its burden to demonstrate any



plain abuse of discretion by the trial court.

POINT II.

THE DEFENDANT-RESPONDENT WAS NOT ENTITLED TO ALIMONY IN THE ANNULMENT PROCEEDING AND THE REINSTATEMENT OF ALIMONY WAS CLEARLY EQUITABLE.

The provisions of Utah Code Annotated, Section 30-117.2 provide certain criteria under which a Court in an annulment proceeding may grant maintenance or alimony to the parties. Those conditions are as follows:

1. The parties have accumulated any property or acquired any obligations.
2. There is a genuine need arising from economic change of circumstances due to the marriage.
3. There are children born or expected.

During the second marriage of the parties, they lived together only two weeks (R 85). The trial court herein specifically found that none of the above criteria were met in this case and that the Defendant-Respondent was not entitled to alimony under the narrow scope of the annulment statute (R 57-58). Therefore, her sole remedy was to petition the Court for reinstatement of the alimony as provided by this Court in the Ferguson decision

(Supra).

In Ferguson (Supra) this Court reviewed this issue in light of two prior cases of Kent v. Kent, 28 U.2d 334, 497 P.2d 652 (1972) and Cecil v. Cecil, 11 U.2d 155, 356 P.2d 279 (1960). In Ferguson, the Court substantially altered the direction of the prior two named cases which seemed to hold that upon the annulment of the subsequent marriage, the prior alimony decree was automatically reinstated. The Court in Ferguson opted for a more liberal rule which would not be regarded as absolute but which rather required the parties to obtain Court review of the circumstances in an equitable determination as to whether the alimony should be reinstated. The Court in Ferguson held:

"Upon proper application of the District Court invoking its continuing jurisdiction, it should be free to proceed in conformity with its general equitable powers upon these generally sound proposition; that when a wife remarries, her right to receive alimony under the divorce decree from her former husband should terminate, and that an annulment of subsequent marriage should not automatically restore the alimony under the prior decree. Notwithstanding the foregoing, the Court may exercise its sound discretion in ordering the reinstatement of the alimony in the prior decree if, upon its consideration of all the circumstances, it appears clearly and persuasively that that is necessary to rectify serious inequity or injustice." (Id. at p. 1383)

In this case, the Court heard evidence relative to the equitable considerations involved in this particular situation. The Court specifically found that since the original divorce decree the wife's (Defendant's-Respondent's) health had deteriorated, that she had a physical condition which was a serious limitation on her ability to work; that the husband's (Plaintiff's-

Appellant's) income was substantially the same; that the attempted marriage of the parties did not adversely alter nor change the Plaintiff's-Appellant's circumstances so that it would be inequitable to require him to continue his alimony payments.

It is further obvious from the facts that none of the fears delineated in the Ferguson case apply here. The Plaintiff-Appellant participated in the marriage and no circumstances were left dangling which were uncertain to him. He had constant influence and control over this marriage. His wife was not in a position as a result of the remarriage to collude with her later spouse for the purpose of restoring alimony by entering into an annulment proceeding since the new marriage herein was between the same parties.

Furthermore, the evidence introduced at the trial herein indicated that the husband (Plaintiff-Appellant) had very nearly engaged in the hypothetical situation discussed in Ferguson as follows:

"Assume, for example, a situation where a wife of many years had reared a family, was divorced under ever so just and proper decree awarding her alimony; and because of disability, age, or for any reason was unable to make a livelihood. Assume further that a husband, motivated by animosity or avarice that sometimes exist, procures an accomplice to connive in a nefarious scheme for the accomplice to persuade the wife to marry him, with a preconceived design of getting the marriage annulled. This for the purpose of effecting the automatic termination of the husband's obligation to pay alimony. Assume that this plan is carried out. Should the wife be left an object of charity or public welfare? The possibility of unconscionable imposition and of injustice is obvious." (Id at p.1382)

(7)

In this case, the Plaintiff-Appellant rather than procuring an accomplice to marry his former wife in a scheme to terminate the alimony; persuaded her by duress, threats, and physical violence to remarry him. The subsequent annulment was heard by Judge Winder and he was convinced upon facts presented at the annulment hearing that, in fact, the marriage was induced by fraud and an annulment decree was entered and never appealed from. This is res judicata on the issue of fraudulent inducement of the Plaintiff-Appellant (husband) inducing the Defendant-Respondent (wife) to marry him the second time. As soon as this scheme became apparent to Defendant-Respondent, she immediately filed for and received the annulment. Indeed, if the Plaintiff-Appellant is allowed to benefit as a result of this fraud and coercion, others will be encouraged to employ the same or similar schemes.

In summary, the equities as demonstrated by the facts presented to the trial court clearly favor a reinstatement of the alimony and public policy would seem best served by discouraging fraudulently induced marriages for the sole purpose of terminating alimony under a prior decree. Furthermore, public policy would also seem better served by encouraging parties to attempt reconciliation of prior marriages by retaining for each party the opportunity to maintain the status quo in the event the subsequent marriage fails. If Plaintiff-Appellant's position is adopted as the rule of law in this state, then indeed, subsequent

marriages between spouses impose a substantial risk on the wife who stands to lose her prior alimony award if the subsequent remarriage fails.

Plaintiff-Appellant erroneously confuses the issue of res judicata with the availability of the Defendant-Respondent to obtain alimony in her annulment proceeding. Plaintiff-Appellant asserted at trial that Defendant-Respondent's failure to ask for alimony in her annulment proceeding, constituted res judicata and she was barred from seeking reinstatement of alimony under her prior divorce. In making this argument, Plaintiff-Appellant fails to recognize that the availability of obtaining alimony in annulment proceedings is narrow (i.e. only under specified criteria) and the trial court in this case, specifically, held that none of the criteria set forth in Utah Code Annotated, Section 30-1-17.2 were met (R 57-58). Therefore, the alimony was not available to Defendant-Respondent in said proceeding. Plaintiff-Appellant erroneously concludes that the unavailability of alimony in the annulment proceeding is a complete bar to alimony reinstatement under Ferguson decision.

Furthermore, the Plaintiff-Appellant erroneously asserts that the decision of the trial court should be overturned because of failure to hear evidence as to the circumstances surrounding the remarriage and annulment. This position is taken in light of the fact that Plaintiff-Appellant made no proffer of proof on that issue. At the trial, Plaintiff-Appellant only at-


tempted to introduce evidence of Defendant's-Respondent's "attitude", "veracity", "animosity", and "vindictiveness" (R111). The court, over objection by Defendant-Respondent, heard the evidence offered and then concluded that it had no probative value to the issue before the court (R113). No further evidence of circumstances surrounding the marriage and annulment was offered by Plaintiff-Appellant. Ironically, the Plaintiff-Appellant objected to Defendant's-Respondent's attempt to introduce such evidence and the Court sustained Plaintiff's-Appellant's objection (R83-84). Plaintiff-Appellant is now taking the position that the Court erred by sustaining his own objection!

#### CONCLUSION

In this matter, the trial court sitting in equity heard evidence offered by both parties concerning facts and circumstances justifying the reinstatement of alimony by the Plaintiff-Appellant. The Court concluded that the annulment did not inequitably alter the original situation between the parties as both parties participated in the affair. The Court concluded that the Plaintiff-Appellant was as capable of paying alimony at the time of the hearing as he was prior to the remarriage and at the time of the divorce. The needs of the Defendant-Respondent for alimony were increased due to her limited working capacity. The conclusions reached by the Court are clearly supported by the facts presented at the hearing; are clearly consistent with the

Ferguson holding and do not involve an abuse of discretion;  
hence, the decision of the lower Court should be affirmed.

Respectfully submitted this 17<sup>th</sup> day of March, 1981.

  
RAYMOND A. HINTZE  
4685 Highland Drive, Suite 202  
Salt Lake City, Utah 84117

Attorney for Defendant-  
Respondent

This is to certify that two copies of the foregoing  
RESPONDENT'S BRIEF were mailed to CRAIG S. COOK, 3645 East 3100  
South, Salt Lake City, Utah 84109 and to JAY E. MESERVY, 820  
Newhouse Building, Salt Lake City, Utah 84111, Attorneys for  
Plaintiff-Appellant, on this 17<sup>th</sup> day of March, 1981.

  
LINDA A. TABOR, Secretary